charges. In my view the rules of natural justice had not been violated. The case of *Jeffs* v. *New Zealand Dairy Production and Marketing Board* [3] relied on by the applicant is too remote for present consideration.

This application is also supported on the authority of *Metropolitan Properties Co. (F.G.C.) Ltd.* v. *Lannon* [4] which held that *certiorari* would lie where there is a reasonable impression of bias even though there is no actual bias. Assuming that is an unassailable proposition of law, the probabilities in the present case, viewing it objectively, do not justify such an inference, let alone on the basis of "real likelihood" of bias. See *S.A. de Smith* at pp. 244-246.

The last but by no means the least point for consideration is whether in admitting hearsay evidence in the course of the inquiry by the Committee of Inquiry, the said committee had violated the implied duty to act judicially. The short answer is that the committee in exercising quasi-judicial functions is not a court of law. It can obtain any information which is relevant for the purpose of the inquiry, from any source or through any channel unfettered by the strict rules of evidence and procedure which govern court proceedings. The only limitation is that the rules of natural justice must be observed. If the rules are satisfied, the inquiry is not open to attack on the ground that the procedure laid down in the Evidence Ordinance was not strictly followed: see *State of Mysore* v. *Shivabasappa.* [5]

The motion is dismissed with costs.

*Motion dismissed.*

Solicitors: *Shearn, Delamore & Co.*

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## KHOO TING HONG & ANOR. v. SIM GUAN SOON & ANOR.

**[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. & Choor Singh J.) February 7, 1969]**

**[Singapore—Federal Court Civil Appeal No. Y.43 of 1968]**

*Negligence — Trespasser — Duty of occupier to trespasser — Duty limited to avoidance of malicious injury only — Mere negligence insufficient to support claim for damages.*

The deceased was a trespasser at a rubbish dump and she was killed when she was run into by a lorry driven by the first appellant who was reversing it towards the rubbish dump. The learned trial judge ([1968] 2 M.L.J. 203) held that the appellants owed a duty of care to the deceased and the act of the 1st appellant in reversing without looking to make sure that the deceased was not behind the lorry was negligence on his part. It was also held that the deceased was contributorily negligent to the extent of 50%. The appellants appealed.

**Held,** allowing the appeal: the duty of an occupier towards a trespasser is only that of not inflicting malicious injury and as in this case there was no evidence that the first appellant knew that the deceased was at the rear of the lorry or anywhere near its path when he commenced to reverse it, there was no duty on the appellants towards the deceased and therefore they were not liable in damages.

[Editorial Note: Reference may usefully be made to the case of *Tan Lian Chye* v. *Malayan Railway Administration* [1967] 2 M.L.J. 276.]

*Cases referred to:—*

(1) *Latham* v. *Richard Johnson & Nephew Ltd.* [1911-13] All E.R. Rep. 117.

(2) *Robert Addie & Sons (Collieries) Ltd* v. *Dumbreck* [1929] A.C. 358.

(3) *Edwards* v. *Railway Executive* (1952), A.C. 737.

(4) *Grand Trunk Railway Co. of Canada* v. *Barnett* [1911] A.C. 361.

(5) *Commissioner of Railways* v. *Quinlan* [1964] 1 All E.R. 897.

(6) *Commissioner of Railways* v. *McDermott* [1966] 2 All E.R. 162.

FEDERAL COURT.

*Choa Hick Tin* (State Counsel) for the appellants.

*H.E. Cashin* for the respondents.

*Cur. Adv. Vult.*

**Choor Singh J.** (delivering the judgment of the court): This is an appeal from a judgment of the High Court in which it was held that the plaintiffs, as administrators of the estate of one Lim Siew Liang, deceased, are entitled to recover damages from the defendants for the deceased's loss of expectation of life.

The deceased was a poor old woman and one day when she was looking over some rubbish dump in Kolam Ayer Lane she was run into and killed by a lorry driven by the first defendant which was then reversing towards the said rubbish dump. It was alleged at the trial that the first defendant did not look to the rear to ensure that it was safe for him to reverse the lorry at the time of the accident. The defendants alleged that the deceased was a trespasser on the dumping ground; that she entered it at her own risk and that they owed no duty to take reasonable care for her protection. The trial judge held that "the defendants owed a duty of care to the deceased and the act of the first defendant in reversing without looking to make sure that the deceased was not behind the lorry was negligence on his part." The trial judge held further that the deceased was aware that lorries of the Public Health Department were going in and out of the dumping ground; that she knew that these lorries reverse to get to the face tip to tip the refuse; that she failed to keep a proper lookout; that she failed to observe that the lorry was reversing and that she failed to move to a safe spot to avoid the

accident. The trial judge assessed the degree of contributory negligence on the part of the deceased at 50 per cent. Damages having been agreed between the parties at $4,600, judgment was entered for the plaintiffs in the sum of $2,300. It is against this judgment that the defendants now appeal.

It is not in dispute that the deceased was a trespasser at the rubbish dump and the first question which arises for determination in this appeal is what duty, if any, does an occupier of premises owe to a trespasser.

There is a considerable body of authority on the duty to trespassers. There is no duty, save only that of not inflicting malicious injury. Hamilton L.J. stated the rule of the English common law with great clarity in *Latham* v. *Richard Johnson & Nephew, Ltd.*,[1] at page 124:—

"The owner of the property is under a duty not to injure the trespasser wilfully; 'not to do' a wilful act in reckless disregard of ordinary humanity towards him; but otherwise a man trespasses at his own risk."

This statement of the law received the full approval of the House of Lords in *Robert Addie & Sons (Collieries) Ltd.* v. *Dumbreck.*[2] Lord Hailsham, in his speech observed, at page 365:—

"The trespasser comes on to the premises at his own risk. An occupier is in such a case liable only where the injury is due to some wilful act involving something more than the absence of reasonable care. There must be some act done with the deliberate intention of doing harm to the trespasser, or at least some act done with reckless disregard of the presence of the trespasser."

The principle was reaffirmed by the House of Lords as recently as 1952 in *Edwards* v. *Railway Executive*,[3] where Lord Goddard clarified the law further when he said, at page 747:—

"A man can only act recklessly with regard to the safety of another if he knows of, or has reason to believe in, the presence of the other."

Turning to the law as laid down by the Privy Council, we find the same principle enunciated in *Grand Trunk Railway Co. of Canada* v. *Barnett*,[4] where the plaintiff was injured by a collision which took place on the appellants' railway line. It was held that the plaintiff could not recover damages because he was a trespasser on the train. Lord Robson in giving the decision of the Board stated, at page 369:—

"The case must therefore be taken on the footing that the respondent was a trespasser, and the question is, what under those circumstances are his rights against the appellant company? . . . . The railway company was undoubtedly under a duty to the plaintiff not wilfully to injure him; they were not entitled, unnecessarily and knowingly, to increase the normal risk by deliberately placing unexpected dangers in his way, but to say that they were liable to a trespasser for the negligence of their servants is to place them under a duty to him of the same character as that which they undertake to those whom they carry for reward. The authorities do not justify the imposition of any such obligation in such circumstances."

Two recent decisions of the Privy Council reaffirm the limits of the duty to trespassers. In *Commissioner of Railway* v. *Quinlan*,[5] Viscount Radcliffe reviewed all the authorities and laid down the law in the following terms:—

". . . . If on the evidence a plaintiff is a trespasser, a person present without right or licence, the occupier's duty to him is determined by the general formula as laid down in *Addie's* case, [1929] All E.R. Rep. at p. 4. That formula may embrace an extensive and, it may be, an expanding interpretation of what is wanton or reckless conduct towards a trespasser in any given situation, and, in the case of children, it will not preclude full weight being given to any reckless lack of care involved in allowing things naturally dangerous to them to be accessible in their vicinity. What the law does not admit however is that a trespasser, while incapable of being described otherwise than as a trespasser should be elevated to the status of an ordinary member of the public to whom, if rightfully present, the occupier owes duties of foresight and reasonable care . . . ."

And in *Commissioner of Railways* v. *McDermott*,[6] Lord Gardiner L.C. who delivered the judgment of the Board had this to say, at page 170:—

"No duty is owing to a trespasser until it becomes known either that he is present or that the presence of a trespasser is extremely likely. The duty, when it arises, is a duty of a very limited character — not to injure him wilfully, and not to behave with reckless disregard for his safety."

The judgment of the trial judge shows that he appreciated the law applicable in the case of a trespasser and it is necessary now to examine his application of it to the facts of this case.

The facts, briefly, are these. The accident took place at the dumping ground for refuse at Kolam Ayer Lane. This site has been so used since 1952 and is under the control of the Superintendent of Public Cleansing, Ministry of Health. This dumping ground is not a prohibited area but there are signboards put up to warn outsiders that no unauthorised persons are admitted to this ground. The signboards are in the four official languages. In spite of the signboards members of the public do trespass on to this ground. There is a watchman on duty and a mandor in charge of the dumping work who do their bit in chasing away the trespassers but with little success. Occasionally the police are called in to assist in keeping out the trespassers. Some trespassers have been prosecuted in the courts for trespassing. The trespassers usually gather at the face tip where refuse is unloaded. The face tip is over a wide area. The primary purpose of the trespassers is to collect items of value such as scrap metals, rags, etc. from the discharged refuse. Health department lorries carrying refuse drive into

the dumping ground and when they reach a certain distance from the face tip, the lorries reverse towards the face tip to discharge the load of refuse. After discharging its refuse the lorry moves off and the refuse is later bulldozed into the swamp. Sometimes when a lorry is reversing towards the face tip in order to unload the refuse, trespassers rush to the spot where they anticipate the refuse will fall, the reason being to get there first in order to salvage what they can from the discharged refuse.

As to the accident itself the only evidence adduced at the trial was that of the first defendant. He stated that he drove his lorry, laden with refuse, into this dumping ground, turned to his right and stopped in order to reverse his lorry. He looked into his nearside mirror but did not see anything. Then he opened the offside door of the driver's cabin and turned around and looked towards the rear of his lorry. Seeing nothing behind his lorry he engaged the reverse gear and slowly reversed the lorry. While he was reversing he was looking at the nearside and offside mirrors. Just then he heard someone shout, "Oh! Oh!" He thought there was another vehicle behind his lorry and so he changed gear and drove forward. Someone ran up to his lorry and told him that he had knocked down a person. He got down from his lorry and went to its rear where he saw an old woman lying on the ground.

The first defendant admitted in cross-examination that when his lorry entered the dumping ground he saw a number of trespassers at a spot which he marked on the sketch plan of the scene. These people according to him were picking up tins from the discharged refuse and he maintained that he did not see anybody in between this group of trespassers and his lorry. He did not see the deceased when he drove in and there was no one at the spot where he later saw the deceased lying on the ground.

The trial judge disbelieved the first defendant's evidence that he looked back towards the rear of his vehicle before he commenced to reverse it and counsel for the appellants has no quarrel with this finding.

It is important to consider the facts on which the trial judge held the defendants liable. The trial judge's findings of fact are set out in the following passage from his judgment:—

"Now what are the facts in this case? The evidence of the first defendant and of the Superintendent of Public Cleansing and of the Divisional Public Health Assistant clearly show that the defendants knew the presence of the trespassers and in fact on the day of the accident the first defendant saw many trespassers picking tins there. On the authority of *Quinlan's* case the defendants owed a duty of care to the deceased and the act of the first defendant in reversing without looking to make sure that the deceased was not behind the lorry was negligence on his part."

The trial judge would appear to have found that the defendants knew of the presence of trespassers in the prohibited area. In our opinion, that clearly is not sufficient to fix liability on the defendants. The duty to a trespasser arises only when his presence is either known or is considered extremely likely. When that is proved, then and only then, does the question of liability arise. In so far as knowledge is concerned, the knowledge required to set up any duty at all in the occupier is his personal knowledge of the other's presence. A person's knowledge is a question of fact. Such a fact is a very different thing from the objective question whether there was a reasonable likelihood of someone being present at the relevant time and place and whether a person ought to have foreseen that likelihood.

What is the factual position in this case? There is no evidence that the first defendant knew that the deceased was at the rear of his lorry or anywhere near its path when he commenced to reverse it. It is true that he saw a group of trespassers at the scene but they were well away from his lorry and were towards its front offside. The crucial question therefore is, can it be said, on the evidence, that the deceased's presence in the path of the reversing lorry was, to the first defendant's knowledge, extremely likely? The trial judge did not consider this question at all and it befalls us now to answer it. In our opinion the facts of the case cannot justify an affirmative answer. The trial judge was therefore wrong in holding the defendants liable in damages. It is insufficient to fix the defendants with liability that the deceased was a member of a class of persons whom the defendants knew to be in the habit of resorting to the dumping ground. Nor is mere negligence on the part of the first defendant sufficient.

On the facts of this case there was no duty on the defendants towards the deceased and accordingly they are not liable to the plaintiffs in damages. The appeal is allowed with costs here and below.

*Appeal allowed.*

Solicitors: *Murphy & Dunbar.*